The Commission has already recognized that it defers to FEMA on matters concerning floodplain management and flood hazard mitigation as the cognizant agency with expertise over those areas.[33] FEMA has long-standing regulations and procedures that require local communities to develop management plans and regulations fully compliant with federal law in order to qualify for the NFIP.[34] To this end, NFIP/FEMA regulations require that new or substantially improved non-residential structures must either be elevated or floodproofed to or above the base flood elevation to minimize any flood damage.[35] The purpose of these regulations mirrors that of NEPA, the *Executive Order*, and the WRC guidelines: "to minimize the potential for flood damages . . . and to avoid aggravating existing flood hazard conditions."[36]

The local authority applies these regulations to each entity seeking zoning and/or building permits to build on a floodplain.[37] If the licensee's proposed construction fails to meet the local flood hazard mitigation requirements approved by FEMA, and thus would have a significant impact on a floodplain, the local authority must deny the licensee's application for a zoning or building

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[33] For example, the Wireless Telecommunications Bureau has acknowledged that "[b]ecause the Commission is not an expert agency on environmental matters . . . [it] defer[s] to the opinions or judgments of other agencies with expertise over a particular subject matter." The Bureau cites to FEMA as the expert agency with jurisdiction over flood plain management. *See Questions Frequently Asked by Licensees* (visited April 30, 1998), <http://www.fcc.gov/wtb/npafaq.html>.

[34] *See* 44 C.F.R. §§ 59.2, 59.21-59.24; *Answers to Questions About the National Flood Insurance Program* at 2, 29 (FIA-2/November 1997, Inventory #084) ("*Answers About NFIP*"). The NFIP was established to enable property owners in participating communities to purchase insurance protection against flood losses. Participation in the NFIP is based upon an agreement between the local communities and the Federal government that if a community will adopt and enforce a floodplain management ordinance to reduce future flood risks in floodplains, the Federal government will make flood insurance available within the community. *See id.* at 1-2.

[35] *See Managing Floodplain Development in Approximate Zone A Areas, A Guide for Obtaining and Developing Base (100-Year Flood) Elevations* at III-1 (FEMA 265/July 1995) ("*Managing Floodplain Development*"); 44 C.F.R. § 60.3.

[36] *Managing Floodplain Development* at III-1

[37] *See Answers About NFIP* at 29; 44 C.F.R. § 60.3.

permit. Therefore, in order for a licensee to build a facility in a floodplain in a NFIP community, it must receive a determination made pursuant to Federal guidelines that the proposed floodplain construction will have a minimal, *i.e.* non-significant, impact on the floodplain.

Based on the foregoing, FEMA's NFIP regulations clearly provide "*adequate provision* for the evaluation and consideration of flood hazards" as required by the *Executive Order*.[38] Given the Commission's discretion to use "*practicable* means and measures to minimize harm,"[39] the Commission would be acting in full compliance with NEPA by amending its rules to exempt FCC licensees from having to file a Form 600/EA application for construction in a floodplain *if* they obtain approval for such construction from local authorities participating in the NFIP.[40] Such action would be consistent with the agency's obligation to adopt procedures "consistent with the standards in the [National] Flood Insurance Program."[41]

N. Cellular Unserved Area Filings

The Commission tentatively concludes that requiring cellular unserved area applicants to submit paper copies of application information is "inconsistent with our proposal to require electronic filing." *NPRM* at ¶ 83. Accordingly, the Commission proposes to eliminate the requirement that licensees submit paper copies of: (1) an application cover, (2) transmittal sheet, (3)

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38 *See Executive Order*, 42 Fed. Reg. at 26,953 (emphasis added).

39 *See WRC Guidelines*, 43 Fed. Reg. at 6034.

40 To date some 19,000 communities participate in the NFIP. Floodplain facilities to be located in communities not participating in the NFIP, or facilities which fail to receive local approval in communities which do participate in the NFIP, would still require the filing of a Form 600/EA application.

41 *See WRC Guidelines*, 43 Fed. Reg. at 6034. Moreover, given that agency procedures must be consistent with NFIP, there is no conceivable reason for the FCC to disapprove for environmental reasons, facilities located in a floodplain and constructed pursuant to the NFIP guidelines. Thus, requiring that applicants prepare environmental assessments for such facilities serves no useful purpose.

table of contents, and (3) numerous engineering exhibits. BellSouth agrees with the Commission's tentative conclusion and associated proposals, but requests further clarification. Specifically, the Commission should clarify that unserved area applicants need not supply maps with their filings. As discussed above, supplying maps is inconsistent with electronic filing and the Commission has indicated that ULS is capable of generating maps from the engineering data supplied by the various ULS forms.

O. Elimination of Needless Antenna Information and Technical Data

The Commission proposes to eliminate the requirements that: (1) cellular licensees provide antenna model, manufacturer, and antenna type information, and (2) Part 101 microwave applicants supply information pertaining to type acceptance number, line loss, channel capacity, and baseband signal type. *NPRM* at ¶¶ 82, 84. BellSouth strongly agrees with the FCC's tentative conclusion that such information provides no "useful data in support of WTB licensing processes." *NPRM* at ¶ 84. All such data filings should be eliminated.

P. Electronic Notifications

The Commission solicits comment on whether FCC notifications should continue to be sent via regular U.S. mail or whether all such notifications should be sent via electronic mail. *NPRM* at ¶ 58. BellSouth urges the Commission to use both mediums to notify licensees and applicants of FCC actions. Adding electronic mail to the current process will not significantly burden the FCC, but can expedite notification of FCC action and facilitate any necessary responses. Notifications via U.S. mail should not be eliminated, however, because of inherent problems with electronic mail.[42] For example, if notifications were sent only via electronic mail, it would be difficult for companies

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[42] *E.g.*, e-mail lost because of a down server, a full mailbox, DNS problems, or incorrect address information.

to distribute and identify notifications if the designated contact person is out of the office or is no longer employed by the company. BellSouth thus urges the Commission to send one copy of all notifications via U.S. mail and to send up to two electronic notifications to representatives designated by the licensee/applicant.

Q. There Should Be a Procedure for Filing ULS Information Without a Taxpayer Identification Number

BellSouth opposes the Commission's proposal to require the submission of a taxpayer identification number ("TIN") as a prerequisite for filing applications through the ULS. *NPRM* at ¶¶ 71-75. In some instances, newly-formed companies may need to file FCC applications prior to receiving a TIN. The Commission should permit companies to use a "dummy" number to submit applications via the ULS — especially if ULS becomes the only option for filing applications — provided the company certifies that it has requested a TIN.

R. Data Entry/Audit Trail Issues

In the submission and revision of draft applications, multiple persons may need to participate in data entry and revision using ULS. ULS must be designed to control access to draft application data and application submission to ensure security of these functions on a person-by-person basis.

Not all of the personnel entering or revising data may be authorized to enter, modify, or submit applications generally on behalf of that applicant. For example, company X, which operates systems in numerous markets, may retain a consulting engineer for one particular application who also works for other companies, including X's competitor in other markets. X would, in such cases, wish to give that engineer access to the particular draft application for which it was retained, while not allowing the engineer to obtain *any* information about other draft applications, including even a list of the pending applications, which would be highly confidential information in which the

competitor would be interested. Similarly, a law firm may be hired to work on a particular matter, while it cannot work on other matters due to conflicts of interest; that law firm should not be exposed to confidential data on such other matters. In addition, employees of a licensee, or outside consultants, may be used to enter data in particular draft applications, while not being authorized to enter or modify data in other draft applications or to "sign" and file applications.

For these reasons, it is essential that the ULS be designed with separate access codes for each authorized person, with access to draft application data being controlled on a person-by-person basis. There should be a list of authorized "signers" and authorized "preparers" for a given applicant. Any of these parties should be permitted to enter a new draft application, but only an authorized signer should be permitted to sign and submit an application, or to grant access to a draft application to any person other than the initial drafter for purposes of review or revision — including access to the listing of a draft application on an index of drafts.

In addition, the Commission should include audit trails in its ULS application drafting system, accessible only to authorized signers, that would permit the licensee to review which personnel have accessed a particular draft application, when they accessed it, and the nature of any changes to the draft. This will ensure that the applicant retains full control over the drafting and filing process.

II. COMMENTS SPECIFIC TO THE PROPOSED RULES

What follows are BellSouth's comments with regard to the proposed rules contained in the appendices to the *NPRM*. To the extent BellSouth comments on a proposed rule that was also referenced in the *NPRM*, BellSouth's substantive comments regarding the rule can be found in the previous section.

A. Section 1.902 — Part 1 Should Govern if There is a Conflict with Another Rule Section

One of the central purposes of the ULS initiative is to enable applicants and licensees "to refer to a single section of the Commission's rules to ascertain all wireless radio services application requirements." *NPRM* at ¶ 11. Proposed Section 1.902 is inconsistent with this objective and reads as follows:

> In case of any conflict between the rules set forth in this subpart and the rules set forth in Parts 13, 20, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of Title 47, Chapter I of the Code of Federal Regulations, the rules in Parts 13, 20, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 shall govern.

In order to eliminate the need for applicants and licensees to cross-check the application requirements in Part 1 with those contained in other subparts, this rule should be revised as follows:

> In case of any conflict between the rules set forth in this subpart and the rules set forth in Parts 13, 20, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of Title 47, Chapter I of the Code of Federal Regulations, the rules <u>contained in this subpart</u> shall govern, <u>except where the rule in such other rule part explicitly provides to the contrary.</u>

B. Section 1.913(d) — The Rules Should Permit the Manual Filing of Applications in Washington, DC

Proposed Section 1.913(d) would require that all manually-filed non-fee applications be filed with the FCC's Gettysburg office. This may delay processing and receipt of applications for services with FCC processing personnel located in Washington, DC. For example, processing of cellular and PCS applications takes place in DC. Accordingly, the Commission should revise the proposed rule to permit applicants/licensees to manually file applications in DC if the applications are processed in DC.

C. Sections 1.923(c) and 1.1307(a)(6) — These Rules Should Not Require the Preparation of an Environmental Assessment for Sites Located in Floodplains That Will Be Constructed Pursuant to FEMA's NFIP Guidelines

Sections 1.923(c) and 1.1307(a)(6) should be revised consistent with BellSouth's Comments in Section I.M. above. Specifically, the following note should be added to Section 1.923(c):

> NOTE: Facilities located in flood plains will not have a significant environmental impact if constructed pursuant to National Flood Insurance Program ("NFIP") guidelines. Thus, if a licensee obtains approval for a site from a locality participating in NFIP, the site is presumed not to have a significant environmental impact.

Similarly, Section 1.1307(a)(6) should be amended as follows:

> (6) Facilities that will be located in a floodplain and will not be constructed pursuant to National Flood Insurance Program ("NFIP") guidelines.
>
> NOTE: If a licensee obtains approval for site from a locality participating in NFIP, the site is presumed not to have a significant environmental impact.

D. Section 1.946(d) Should Not Apply To PCS Licensees

Proposed Section 1.946(d) states that a "licensee who commences service within the construction period or meets its coverage or substantial service obligations within the coverage period must notify the Commission by updating its FCC Form 601." The Commission should clarify that the proposed rule does not impose a new filing requirement on PCS licensees to notify the Commission once they commence service to the public. PCS licensees need only update their Form 601 once they meet their coverage or substantial service obligations.

The proposed rule also cross-references Section 22.163 which the Commission proposes to eliminate. *See* proposed rule 47 C.F.R. § 1.946(d)(3). The Commission should eliminate this reference from the proposed rule.

E. Section 1.948(c) — The Commission Should Only Require Applicants to Notify the Commission of the Completion of a Transaction Within Thirty Days of Consummation

As stated in Section I.K., BellSouth opposes the Commission's proposal to reinstate consummation deadlines that were eliminated for the microwave service nearly two years ago. Rather than reimpose these requirements, BellSouth urges the Commission to eliminate the consummation deadlines for all wireless services.[43] Under this proposal, the rule should read as follows:

> In all Wireless Radio Services, licensees are not required to notify the Commission of completion of an approved transfer or assignment. In the event an approved transfer or assignment is not consummated, and the license should be restored to its prior status, the assignee or transferee must notify the Commission of that fact on FCC Form 603 or 604, and must provide updated information on FCC Form 602 if the information on such form is not current.

F. Section 1.1111 — The Commission Should Provide Five Days for the Receipt of Application Fees

The Commission proposes to dismiss a ULS application if the fee associated with the application is not received within one business day after the application's submission. *See* proposed rule 47 C.F.R. § 1.1111. BellSouth opposes this rule because it forces applicants to send fees either electronically or via courier. Extending the deadline for receipt of fees to five (5) business days after filing an application would allow carriers to use U.S. mail or other delivery means.

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[43] At a minimum, the Commission should not adopt the proposed bifurcated consummation notice requirement. The purpose of ULS was to simply and streamline FCC rules, which is inconsistent with a bifurcated transfer and assignment rule.

G. Section 22.150 — The Commission Should Clearly Articulate The Procedure For ULS Technical Coordination And Should Clarify That The Rule Does Not Apply To Cellular Licensees

The Commission proposes to amend Section 22.150(d) to stipulate that standard technical coordination requires 30-day notice, which commences on "the date the notification is submitted to the Commission via the ULS." *See* proposed 47 C.F.R. 22.150(d). The Commission does not explain, however, how this notification procedure will work.[44] The Commission should clearly articulate how the technical coordination notice will be submitted to ULS and how interested parties will be advised of the technical coordination notice.

Moreover, when the Commission originally adopted Section 22.150, it stated that the rule "applies only to 2 GHz microwave and Hawaiian Inter-Island stations."[45] The text of the rule is ambiguous, however, and various parties have asserted in the past that cellular carriers must abide by Section 22.150. The Commission should revise the rule to clearly exempt cellular carriers.

H. References To Section 22.163 Should Be Eliminated

The Commission proposes to eliminate Section 22.163 as part of this proceeding. A number of the proposed rules, however, cross-reference Section 22.163. *See* proposed rules 47 C.F.R. § 1.946(d) ("This section does not require licensees to notify the Commission of facilities added or modified pursuant to the provisions of sections 22.163 . . ."), § 22.352. The Commission should eliminate any references to Section 22.163 contained in either the proposed or existing rules.

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[44] BellSouth notes that the Commission specifically refers to submission of the "notification" to ULS and, thus, this rule change does not appear to require the filing of an application.

[45] *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, CC Docket No. 92-115, *Report and Order*, 9 F.C.C.R. 6513, 6554, App. A (1994).

I. Section 22.165(e) Should Be Revised to Accurately Reflect the Commission's Service Area Boundary Rules

As part of this proceeding, the Commission should revise the text of Section 22.165(e) to clearly articulate the rules governing service area boundaries ("SABs"). As currently written, the rule incorrectly implies that SABs cannot extend into an adjacent market after the five-year build-out period. The rule also implies that, during the five-year build-out period, SABs can only extend into areas of an adjacent market already being served. Neither implication is correct. Cellular SABs may extend into the CGSA of a cellular licensee in an adjacent market *at any time*, provided the adjacent licensee consents to the proposed extension. Moreover, a cellular licensee may propose SABs that extend into areas of an adjacent market that are not served by the adjacent licensee, prior to the expiration of the five-year build-out period in an adjacent market. These SAB extensions do not require the approval of the adjacent licensee if they are *de minimis* and do not overlap with the CGSA of the adjacent licensee. SAB extensions into an adjacent market are prohibited *only* if the five-year build-out period has expired in the adjacent market and the SABs would extend into areas not served by the adjacent licensee.[46]

Section 22.165(e) also requires the submission of maps. As discussed in Section I.A., the ULS system is capable of generating the maps and rule requiring the submission of maps is inconsistent with an electronic filing system. Accordingly, BellSouth proposes that Section 22.165(e) be amended as follows:

> Cellular Radiotelephone Service. <u>The service area boundaries ("SABs") of additional transmitters, as calculated by the method set forth in Section 22.911(a), may extend into adjacent markets if the SABs: (i) extend into the CGSA of the adjacent licensee with the consent of the adjacent licensee; (ii) extend into previously approved extension areas; or (iii) extend into area not served by the adjacent</u>

[46] In order to extend SABs in this fashion, a licensee must file an unserved area application.

> licensee during the five-year build-out period of the adjacent market. Licensees must notify the Commission (FCC Form 601) of any transmitters added under this section that cause a change in the CGSA boundary. If the addition of transmitters involves a contract service area boundary ("SAB") extension (see sec. 22.912), the notification must include a statement as to whether the five-year build-out period for the system on the relevant channel block in the market into which the SAB extends has elapsed. If the build-out period has elapsed, the applicant also should provide a certification that the SAB does not extend into unserved area or request the appropriate waiver. The notification must be made electronically via the ULS, or delivered to the filing place (see Section 1.913 of this chapter) no later than 15 days after the addition is made.

In addition, the Commission should revise its rules to ensure that the ULS deals properly with SABs calculated using alternative propagation methods. In such cases, the applicant should be required to submit maps (including, perhaps, maps in a specified electronic format), and the ULS should *not* display coverage maps based on calculations using the standard propagation, but should, instead, display the applicant's map that was prepared using the alternative propagation method.

J. Section 22.911(b) — The Commission Should Clarify How Alternative CGSA Proposals Will Be Submitted Under the ULS

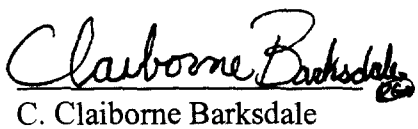
As discussed more generally in Section I, certain requests for FCC authorization do not lend themselves to electronic filing. In this regard, BellSouth is unclear how a cellular applicant/licensee would request an alternative CGSA determination and submit the necessary information via ULS. The Commission should clarify how to request an alternative CGSA via the ULS and should issue an example of an alternative CGSA ULS application for public comment. As discussed above, the Commission should *not* display system coverage based on the standard calculations from application data where an alternative propagation method is employed.

CONCLUSION

BellSouth generally supports the Commission's undertaking to revise and streamline its wireless application rules. This proceeding provides the Commission with an opportunity to eliminate many needless regulatory burdens and clarify the requirements that are imposed on licensees. The revisions set forth herein will further assist the Commission in this effort.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 

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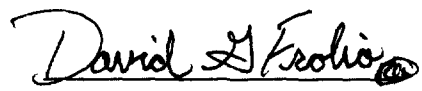
By: 

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CERTIFICATE OF SERVICE

I, Brooke Wilding, hereby certify that on this 22nd day of May 1998, copies of the foregoing "Comments of BellSouth" in WT Docket No. 98-20 were served by hand on the following:

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